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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/608,385	06/27/2003	Aaron Rollins	ROLL0603	7973
44060	7590	03/10/2005	EXAMINER	
BENJAMIN APPELBAUM, PH.D. ATTORNEY AT LAW 27 BENNINGTON DRIVE FLANDERS, NJ 07836			SAN MARTIN, EDGARDO	
			ART UNIT	PAPER NUMBER
			2837	

DATE MAILED: 03/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/608,385	ROLLINS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Edgardo San Martin	2837	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 27 June 2003.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-7 and 9-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 1-7,9-21,23 and 25-28 is/are allowed.
- 6) Claim(s) 22,24 and 29 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 27 June 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____ .

## DETAILED ACTION

### ***Drawings***

1. Figure 3 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g).

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description:

- Items 63 and 68 in Figure 9B as described in the Specification on page 11, line 4.

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "means for guiding" claimed in claims 13 and 25 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for

consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Specification***

4. The disclosure is objected to because of the following informalities:

- The specification fails to describe the limitations claimed in claims 13 and 25 in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The "means for guiding" are not described in the specification as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Appropriate correction is required.

### ***Claim Objections***

5. Claims 5, 6, 8, 13, 19 – 27 and 29 are objected to because of the following informalities:

- In claim 5, line 1 should read - - 4 - - instead of "5";

- In claim 6, line 1 should read - - 5 - - instead of "6";
- There is no claim 8;
- Claim 13 contains subject matter ("means for guiding") which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention;
- Claims 19 – 21 are objected to under 37 CFR 1.75 as being a substantial duplicate of claims 15 - 17. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).
- Claims 22 and 24 are objected, because the specification, while being enabling for the subject matter discussed in the current application Specification Page 10, lines 19 – 33, Page 11, Line 25+ and Page 12, lines 7 - 9, does not reasonably provide enablement for "*a body having a rim, a wall adjoining the rim, and an opening therein, the stethoscope head being received in the opening, the rim being larger than the stethoscope head, the body positioned on the stethoscope head such that the reflex hammer does not interfere with the stethoscope head operational surface;*

*and a semi-rigid handle receiving the connecting means therein, the handle not being joined to the body".* The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to use or make the invention commensurate in scope with these claims. The subject matter described in the claim is not supported by the specification or by the drawings.

- Claim 23 is objected to under 37 CFR 1.75 as being a substantial duplicate of claim 1. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).
- Applicant is advised that should claim 22 be found allowable, claim 24 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

- In claim 25, Line 18 after “the stethoscope head” the ending period should be deleted and a comma or semicolon should be inserted;
- Claim 25 contains subject matter (“means for guiding”) which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention;
- Claim 29 is objected, because the specification, while being enabling for the subject matter discussed in the current application Specification Page 10, lines 6 – 33, does not reasonably provide enablement for *“the means for connecting being a stem which is oversized, the stem being used as a handle; ... a body having a rim, a wall adjoining the rim, and an opening therein, the stethoscope head being received in the opening, the rim being larger than the stethoscope head, the body positioned on the stethoscope head such that the reflex hammer does not interfere with the stethoscope head operational surface”*. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to use or make the invention commensurate in scope with these claims. The subject matter described in the claim is not supported by the specification or by the drawings.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 22 and 24 are rejected under 35 U.S.C. 102(e) as being anticipated by Bates (US 6,510,918).

Bates teaches a tool for medical testing, the tool comprising, in combination: a stethoscope (Fig.1), the stethoscope comprising a stethoscope head (Fig.1, Item 20), the stethoscope head having an operational surface, the head and the operational surfaces each having a size; one or more earpieces (Fig.1, Item 11); and a means for connecting the stethoscope head with the earpiece (Fig.1, Item 15); a reflex hammer (Fig.1, Item 30), the reflex hammer attached to the stethoscope head (Figs.1 and 2), the reflex hammer comprising: a body having a rim (Fig.2, Item 26) and an opening therein (Fig.7, Item 24), the stethoscope head being received in the opening, the rim being larger than the stethoscope head, the body positioned on the stethoscope head such that the reflex hammer does not interfere with the stethoscope head operational surface; and a semi-rigid handle (Figs.1 and 7, Item 40; Col.5, Lines 1 - 4) receiving the connecting means therein, the handle not being joined to the body.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bates (US 6,510,918) in view of Gould (US 2,807,328).

Bates teaches the limitations discussed in a previous rejection, but fails to disclose wherein the means for connecting is a stem which is oversized, and the stem being used as a handle.

Nevertheless, Gould teaches a reflex hammer (Fig.2, Item 8) attached to a stethoscope head (Fig.2, Item 1), and a stem (Fig.1, Item 7) which is oversized connecting the stethoscope head (Fig.1, Item 1) with an earpiece (Fig.1, Items 2 and 3), wherein the stem being used as a handle (Fig.5).

It would have been obvious to any person with ordinary skill in the art, at the time when the invention was made, to employ the Gould oversize stem with the Bates design because the oversize stem would provide a long enough handle for a user to firmly grip and control the reflex hammer, and would provide enough length to reach certain patient's body parts with ease without creating an embarrassing situation between patient and examiner.

***Allowable Subject Matter***

8. Claims 1 – 7, 9 – 21, 23 and 25 – 28 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

- The references of the Prior Art of record fail to teach, or suggest any obvious combination of the limitations discussed above, and further comprising the limitations of **(With respect to claims 1, 15, 19 and 23)** reflex hammer comprising a body having a rim, a *wall adjoining the rim*, and an opening therein, the stethoscope head being received in the opening, the rim being larger than the stethoscope head, the body positioned on the stethoscope head such that the reflex hammer does not interfere with the stethoscope head operational surface; and a handle, *the handle joined to the body, the handle sized to receive and semi-rigidly receiving the connecting means therein*; nor **(With respect to claim 25)** reflex hammer comprising a body having a rim, a *wall adjoining the rim*, and an opening therein, the stethoscope head being received in the opening, the rim being larger than the stethoscope head, the body positioned on the stethoscope head such that the reflex hammer does not interfere with the stethoscope head operational surface; and a handle, *the handle joined to the body, the handle sized to receive and semi-rigidly*

*receiving the connecting means therein; the handle further comprising a detent distal from the stethoscope head; an opening being formed in the body between the rim and the handle, the opening allowing rotation of the stethoscope head; the reflex hammer body comprising one or more members, the members being joined by a fastener, the members comprising a means for guiding the connecting means therein; nor (With respect to claim 28) reflex hammer comprising a body having a rim, a wall adjoining the rim, and an opening therein, the stethoscope head being received in the opening, the rim being larger than the stethoscope head, the body positioned on the stethoscope head such that the reflex hammer does not interfere with the stethoscope head operational surface; and a handle, the handle sized to receive and semi- rigidly receiving the connecting means therein; the handle further comprising a detent distal from the stethoscope head.*

### ***Conclusion***

9. The attached hereto PTO Form 892 lists prior art made of record that the Examiner considered it pertinent to applicant's disclosure.

***Contact Information***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edgardo San Martin whose telephone number is (571) 272-2074. The examiner can normally be reached on 8:00AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Martin can be reached on (571) 272-2107. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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Art Unit 2837  
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